UNITED NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.378
1 November 1999

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 378th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 5 May 1999, at 10 a.m.

Chairman: Mr. BURNS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Third periodic report of the Libyan Arab Jamahiriya

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.378/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.99-41592 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Third periodic report of the Libyan Arab Jamahiriya (CAT/C/44/Add.3; HRI/CORE/1/Add.77)

1. At the invitation of the Chairman, Mr. Tleba and Ms. Al-Hajjaji (Libyan Arab Jamahiriya) took places at the Committee table.

2. The CHAIRMAN invited the head of the delegation of the Libyan Arab Jamahiriya to present its report.

3. Mr. TLEBA (Libyan Arab Jamahiriya), underscoring the importance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was an essential instrument in the defence of human rights, reaffirmed the Libyan Arab Jamahiriya's commitment to that instrument and to individual freedom and respect for human rights in general.

4. The third periodic report, which the authorities had been keen to submit on time, described the political system of the Jamahiriya, which was a direct popular democracy in which the people was called upon to exercise its authority through the intermediary of people's congresses that took all important decisions, whether on questions of purely local interest or on matters of foreign policy, for example the ratification of international conventions. The people was therefore sovereign, and that was an ideal system in a world that was less than ideal. Regrettably, many countries failed to understand the democratic experience of the Jamahiriya, which had been slandered for purely political reasons.

5. Concerning the functioning of the legislative, executive and judicial branches, he stressed that they were independent and rejected a number of specious allegations emanating from misinformed non-governmental organizations (NGOs) according to which there was no independent federation of lawyers: such a body existed and was in fact a member of many professional groups, including the International Association of Lawyers, the International Association of Democratic Lawyers and the Union of Arab Jurists.

6. The second part of the report explained the application of the provisions of the Convention article by article as they related to the corresponding provisions of Libyan legislation. In the hypothetical case of a difference between domestic law and an international instrument, the latter systematically took precedence.

7. The most important provisions of the Convention were already part of legislation, which drew direct inspiration from the Islamic religion, for which the individual was sacred, as illustrated by the prohibition on any punishment that was contrary to human dignity.

8. The Libyan Arab Jamahiriya was also a place of refuge for persons persecuted for political reasons. Under its domestic legislation, a refugee could not be expelled; that was also in conformity with the provisions of the 1951 Convention relating to the Status of Refugees. Also, no state of emergency had been proclaimed since 1967.

9. All the provisions of the Convention had their equivalent in Libyan legislation, and civil servants were made systematically aware of the importance of respecting human rights, which was a special subject of study at the police academy.

10. In closing, he reiterated the Libyan Arab Jamahiriya's firm commitment to human rights; any act to the contrary could only constitute an isolated case, given the State's legislative system and the fact that such an act would constitute a violation not only of international instruments but also of the customs and teachings of Islam.

11. Mr. SØRENSEN (Country Rapporteur) noted with satisfaction that the third periodic report had been submitted on time and stressed that exchanges between the Committee and States parties were prompted by an ongoing concern to develop a dialogue.

12. In 1994, during consideration of the previous report (CAT/C/25/Add.3), articles 1, 4 and 16 of the Convention had been examined in depth, and the Committee had been pleased to see that the legislative apparatus had been very complete and in conformity with the Convention and that torture had been made a separate crime in domestic legislation. However, it had been alarmed to note that incommunicado detention had created conditions conducive to many violations of the Convention and had been concerned about allegations of torture and ill-treatment received from reliable non-governmental sources. It had then recommended that the State party should guarantee the right of detainees to see a lawyer, a doctor and their families and had urged it to make it unmistakably clear to the police that torture was unacceptable.

13. In its revised guidelines regarding the form and contents of reports, the Committee had expressly called upon States parties to report on how they had taken account of the Committee's recommendations. Accordingly, he drew attention to the question of incommunicado detention, which in the Jamahiriya could in certain circumstances last up to seven days. According to legislation, a detainee, even if held incommunicado, had the right to see his lawyer. But the Committee continued to receive allegations that some detainees were not allowed to do so and that others remained in incommunicado detention for very long periods and were tortured. Other allegations referred to detainees not being allowed to see a doctor. He asked what the situation was, not from the point of view of legislation, but in everyday practice. On the same subject, he requested figures on the number of detainees who might have been denied visits, for example in 1997 and 1998. He also inquired how many persons had been denied the right to see a lawyer and the number of complaints filed in that connection, a question the Committee had already asked in 1998.

14. Regarding article 3, he said that the legal provisions in force were excellent, and he was pleased to note that the Jamahiriya applied the principle of non-extradition of politically persecuted persons and freedom fighters. In that connection, nationals of the member States of the Arab Maghreb Union (AMU), to which Libya belonged, could settle freely in any member State and were thus not regarded as refugees; yet the Committee's attention had been drawn to the case of persons who had been ill-treated in Tunisia after being extradited to that country. It would therefore be useful to have more information on the nature of the link between article 21 of the Promotion of Freedom Act and the AMU Treaty, both at the legal and the practical level. It should be borne in mind that the provisions of article 3 were categorical: no one could be expelled to a State in which he would be in danger of being subjected to torture.

15. Turning to article 4 (2) of the Convention, on appropriate penalties for the offence of torture, he observed that, according to paragraph 39 of the report, article 435 of the Penal Code provided for a penalty of 3 to 10 years' imprisonment for any public official found guilty of an act of torture. Did the punishment fit the crime?

16. As to article 5 of the Convention, on universal jurisdiction, he noted that the Convention could be directly invoked, since international treaties took precedence over domestic law, but asked whether it actually had been in practice.

17. Lastly, in respect of article 8 of the Convention, he took note that article 493 of the Code of Criminal Procedure specified the conditions for extradition and inquired what would happen in the specific case of a person suspected of committing an act of torture who was a national of a State which had not ratified the Convention and in which torture did not constitute an offence as such. Under the conditions in the Libyan Penal Code, would that person be tried in the Jamahiriya?

18. Mr. YU Mengjia (Alternate Country Rapporteur) said that the report and the presentation by the delegation gave a very clear idea of the Libyan legal system and its principles. On the whole, the provisions of the Convention had been incorporated into the country's domestic law. He drew attention to a number of positive points: Libya recognized the primacy of international instruments to which it had acceded, including the Convention against Torture, over its domestic legislation; it maintained that it respected the principle of the independence of the judiciary; and it had made efforts to heighten awareness of the prohibition of torture through education and training, notably for law-enforcement officials.

19. Concerning more particularly the provisions of article 11 of the Convention on the systematic review of interrogation practices and arrangements for the custody and treatment of arrested persons, he asked whether, in addition to the legislative rules adopted, the State party had set up a review mechanism to identify and eliminate on time any failure to comply with the rules.

20. Regarding the principles set out in articles 12 and 13 of the Convention on the obligation to proceed to an investigation of allegations of torture and the right of victims of torture to lodge a complaint, he said that despite the examples given in paragraph 23 of the report, which suggested that Libya prosecuted the authors of such acts, the Committee continued to receive allegations of torture and ill-treatment. He asked the delegation to reply to those allegations. Had investigations been carried out in cases of death in custody reported in the media, and had the findings been made public?

21. Article 14 of the Convention dealt with the question of compensation for victims of torture. In view of what was stated in paragraph 82 of the report, he inquired whether the State paid compensation to the victim when a public official sentenced to pay compensation was insolvent.

22. As to the inadmissibility of confessions obtained under duress, which was covered by article 15 of the Convention, he asked the State party to comment on allegations of violations of that principle.

23. Lastly, paragraph 74 of the report stated that "the purpose of penalties is to reform, correct, rehabilitate, educate, discipline and admonish". How was that principle implemented, what had been the results, what was the rate of recidivism, and were there any statistics on the subject?

24. Mr. MAVROMMATIS welcomed the determination shown by the State party to promote human rights and apply the provisions of the Convention. The role of the Committee was to help States give concrete form to their efforts in that area. Hence the need to know how the Convention was implemented in practice. International instruments only set norms, and it was then up to the country to establish the procedures, mechanisms etc. for implementing them in the context of its own structures. He pointed out that neither the report nor the oral presentation had referred to the Committee's earlier recommendations. It was to be hoped that the delegation would do so in its replies. Concerning the independence of the judiciary, he inquired as to why the Secretary for Justice, who was a representative of the Government, was a member of the Supreme Council of the Judiciary: that called into question the independence of that body, which was responsible for appointing judges.

25. Paragraph 33 of the report stated that it was "prohibited to subject an accused person to any form of physical or mental torture ...". That provision was not in conformity with article 1 of the Convention, which protected all persons, and not just "accused" persons.

26. He would also like to have further information on the State party's regime for the enforcement of sentences, corporal punishment, if applicable, the death penalty and how the latter was carried out.

27. Concerning the provisions on extradition in article 8 of the Convention, he wondered how Libya justified the extradition to the Netherlands of the suspected perpetrators of the Lockerbie bombing, given

that paragraph 49 (d) of the report stated that one of the conditions for the admissibility of an extradition request was that it must not relate to a Libyan citizen.

28. In paragraph 23 of the report, the State party gave examples of cases that had come before the courts. Were there any statistics on the number of complaints lodged, investigations opened and prosecutions commenced following those investigations? Concerning case No. 76 of 1994, in which a police officer had been sentenced to one month's imprisonment and fined 100 dinars for violence against a number of persons, he was amazed at the leniency of the penalty and wondered whether Libya applied the principle of proportionality of punishment. If it did, then why had that offence, which was quite serious, if only because it involved several victims, not been punished more severely?

29. Lastly, he requested information on measures taken to monitor police stations and other places of detention in order to be certain that detainees were not subjected to ill-treatment or torture.

30. Mr. CAMARA stressed the serious manner in which the report had been drafted. However, he was surprised that, according to paragraph 37 of the report, the State party seemed only to protect persecuted persons and freedom fighters from extradition and asked whether, as required by article 3 of the Convention, all persons were not covered by that protection. He also sought clarification on the procedure applied when a person was interrogated, because the explanations in paragraph 65 of the report were confusing.

31. Mr. GASPAR asked for more information on paragraph 70 (d) of the report. Did Libyan legislation provide for physical constraint for failure to comply with contractual obligations in general or only in cases of financial offences?

32. Mr. SØRENSEN (Country Rapporteur) said that it would be important for the State party, notwithstanding its economic difficulties, to make even a token contribution to the United Nations Voluntary Fund for Victims of Torture, because such a gesture facilitated the rehabilitation of victims, who felt respected and recognized by the authorities of their country.

33. Mr. GONZÁLEZ POBLETE said that the Committee had received allegations of the practice of amputation and flogging as punishment, which was contrary to article 16 of the Convention. He requested information on the provisions of Libyan legislation relating to corporal punishment.

34. Mr. YAKOVLEV sought clarification on the content of article 26 of the Code of Criminal Procedure concerning the extension of detention, because anything that had to do with custody, pre-trial detention and, above all, incommunicado detention was crucial to the application of the Convention. Also, was not article 206 of the Penal Code, on political or opinion-making organizations, contrary to the principle of freedom of association? How exactly was article 206 implemented?

35. The CHAIRMAN said that, like Mr. Mavrommatis, he would like the delegation to comment on the allegation that there were no independent NGOs or human rights associations in the State party: if that was the case, the question arose as to what overall monitoring mechanism had been set up to ensure implementation of human rights conventions. Such monitoring was usually carried out either by independent organizations whose supervision was political or moral or by an appropriate government body, which became essential if such independent organizations were non-existent.

36. There was often a considerable discrepancy between the legal system set up by States parties and machinery for its actual implementation. From a formal point of view, the Libyan legal mechanism for implementing the Convention was not open to criticism, but the Committee needed to know more about how it worked in practice. Amnesty International, although it did not have an office in the State party, had apparently received reports that hundreds of persons had been arrested without a warrant and without being informed of the reasons and that political detainees were held incommunicado for periods of as long as one month, during which time they were tortured. For example, paragraph 447 of his recent report to the Commission on Human Rights (E/CN.4/1999/61) stated that the Special Rapporteur on torture had advised the Government of the Libyan Arab Jamahiriya that he had received information on methods of torture and other forms of ill-treatment applied to detainees during interrogation: it would be useful to hear the delegation's comments on that subject. The same document also referred to deaths occurring in custody; the case of Mr. al-Fourtiya, cited in paragraph 449 of the report, was particularly alarming, because he had apparently been detained without charge or trial from 1989 until his death in late 1994 or early 1995.

37. Like Mr. Mavrommatis, he would like to know whether capital punishment had been applied in the State party in the past four years and whether flogging was still practised; if so, it would be useful to have relevant statistics covering that period.

38. Lastly, after associating himself with other speakers in praising the punctuality with which the report had been submitted and the way it had been presented, he invited the Libyan delegation to reply, at a later meeting, to the questions asked.

39. The delegation of the Libyan Arab Jamahiriya withdrew.

The first part (public) of the meeting rose at 11.30 a.m.